liable for want of notice of non-payment, will become liable on a new promise to pay, whether or not he knew of his defense. *Third Nat. Bank* v. *Ashworth*, 105 Mass. 503.

CONTRACTS — DEFENSES — STATUTORY INFORMALITY AS DEFENSE AGAINST SUIT BY GOVERNMENT. — The defendant, whose bid for transportation of coal had been accepted by the United States Navy Department, was tendered a written contract in the form required by statute. U. S. REV. STAT., § 3744. This he refused to sign on the ground of variance. The government now sues for breach of contract. *Held*, that the plaintiff may recover. *United States* v. *New York, etc. Steamship Co.*, 239 U. S. 88.

Although the statute in the principal case does not in terms invalidate unwritten contracts, the Supreme Court has held them unenforceable against the United States. *Clark* v. *United States*, 95 U. S. 539; *Henderson's Case*, 4 Ct. Cl. 75. This construction carries out the purpose of the statute, which is, in the words of its preamble, "to prevent and punish Fraud on the Part of Officers intrusted with making Contracts for the Government," for it assures to the government that all fraudulent contracts will be either written and on file or nugatory. But it would be going beyond both the terms and the purpose of the statute to extend this construction to make informal contracts unenforceable against the contractor, for it is inconceivable that Congress intended to protect him against frauds of the government. The objection that the government's promise thus becomes illusory, and hence no consideration for the contractor's promise, has no greater force than in contracts of infants or in contracts under the Statute of Frauds where only the defendant has signed the memorandum. *Holt* v. *Ward Clarencieux*, 2 Strange 937; *Clason* v. *Bailey*, 14 Johns. (N. Y.) 484. Nevertheless, as the contractor may well be led into expensive preparations which in no wise enrich the government, the lack of mutuality throws a burden on the contractor not wholly relieved by his right to recover in *quantum meruit*. *Clark* v. *United States*, *supra*. A possibility in the principal case not mentioned by the court is that both parties looked forward to the required formalities as a necessary preliminary to a binding contract. *Mississippi, etc. Steamship Co.* v. *Swift*, 86 Me. 248, 29 Atl. 1063. See *Capital Printing Co.* v. *Hoey*, 124 N. C. 767, 793, 33 S. E. 160, 168.

CORPORATIONS — STOCKHOLDERS: RIGHTS INCIDENT TO OWNERSHIP — RIGHT TO VOTE: VOTING TRUSTS. — The holders of the majority stock of a corporation transferred their stock to the president as trustee, taking in return trust certificates. The trust was to last for ten years, the absolute power to vote being in the trustee. The plaintiff purchased certain trust certificates, and upon demand being made the defendant refused to issue stock certificates in exchange for the trust certificates. The plaintiff brings a bill in equity praying a cancellation of the agreement and a decree ordering the stock to be issued. *Held*, that the relief should be granted, the agreement being void. *Luthy* v. *Ream*, 110 N. E. 373.

For a discussion of this case, see NOTES, p. 433.

CRIMINAL LAW — LIABILITY FOR OTHERWISE LAWFUL ACT RESULTING IN UNLAWFUL ACT OF OTHERS — SALE OF LIQUOR WITH KNOWLEDGE THAT IT IS TO BE RESOLD ILLEGALLY. — The defendant sold liquor knowing that the buyer intended to resell it in violation of the law. *Held*, that he was guilty of aiding and abetting in the subsequent resale. *Cook* v. *Stockwell*, 113 L. T. R. 246 (K. B.).

It is a general rule that the intervening, independent acts of a third person, if foreseeable, will not make a preceding cause remote. *Carter* v. *Towne*, 98 Mass. 567; *Jennings* v. *Davis*, 187 Fed. 703, 709; *Dixon* v. *Bell*, 5 Maule & S.

198; *Rex* v. *Oliphant*, [1905] 2 K. B. 67; *Reg.* v. *Butt*, 15 Cox C. C. 564. And if, as in the principal case, the defendant's act clearly participated in producing the wrongful result, it is not material that it was not a *causa sina qua non*. *Anderson* v. *Settergren*, 100 Minn. 294, 111 N. W. 279; *Binford* v. *Johnston*, 82 Ind. 426; *Reg.* v. *De Marny*, [1907] 1 K. B. 388. However, it was once currently asserted and is still heard to-day, that this rule of foreseeability does not apply when the intervening independent acts were done wilfully and unsolicited. *Andrews & Co.* v. *Kinsel*, 114 Ga. 390, 40 S. E. 300. See *Alexander* v. *Town of New Castle*, 115 Ind. 51, 53. See 1 WHARTON, CRIMINAL LAW, 9 ed., § 160. But this limitation, which is inconsistent with the general principles of causation since intentional acts may be equally as foreseeable as negligent ones, has been much criticized and is less widely asserted to-day. See J. Smith, "Legal Cause in Actions of Tort," 25 HARV. L. REV. 103, 121; SALMOND, TORTS, 2 ed., 114. See *Lynch* v. *Knight*, 9 H. L. Cas. 577, 600; *Meade* v. *Chicago, etc. Ry. Co.*, 68 Mo. App. 92, 100. *Cf. Wise* v. *Dunning*, [1902] 1 K. B. 167. Nor is proximate causation in the principal case negatived by the series of cases holding that a seller who did no acts tending directly to further the illegality, may enforce a contract of sale though he knew the goods were to be illegally resold in another jurisdiction. *Graves* v. *Johnson*, 179 Mass. 53, 60 N. E. 383; *Hill* v. *Spear*, 50 N. H. 253; *Pellecat* v. *Augell*, 2 Crompt. Meas. & Ros. 311. For these cases turn on questions of public policy and comity rather than of proximate causation. See *Hill* v. *Spear*, *supra*, at 273. Granting causation it is submitted that the fact that the defendant in the present case is not technically either a *principal* or an *accessory* does not prevent his conviction, for if causation and the necessary elements of an offense are made out, an arbitrary technicality of crimes at common law should not be carried over to support acquittal for violation of a police regulation. *Reg.* v. *De Marny*, *supra*. However, in enforcing liquor regulations it has been generally held that a person, whether buying for himself or as agent, cannot be held liable because the sale was illegal. *State* v. *Rand*, 51 N. H. 361; *Commonwealth* v. *Willard*, 22 Pick. (Mass.) 476; *Evans* v. *State*, 55 Tex. Cr. 450, 117 S. W. 167; *Anderson* v. *State*, 32 Fla. 242, 13 So. 435. But those cases are supportable on reasons applicable to buyers only. See 26 HARV. L. REV. 550. Hence they are not in conflict with the decision in the principal case.

DAMAGES — PENALTIES — EFFECT OF POSTING PENAL SUMS TO SECURE PERFORMANCE OF CONTRACT. — The plaintiff and R., having formed a contract, placed the written agreement and $2,000 apiece with the defendant bank, which, in the event of a breach of this contract, was to pay the delinquent's deposit to the injured party. After the date set for performance of the contract, the plaintiff, contending that the arrangement for the payment of penalties was void, demanded the return of his deposit. On the bank's refusal to comply, he sues. *Held*, that he cannot recover without showing that R. has no claim on his deposit for damages. *Kuter* v. *State Bank of Holton*, 152 Pac. 662 (Kan.).

In lieu of the above arrangement, suppose that the plaintiff and R. had exchanged penal bonds of $2,000, to be void on performance by the obligors of their respective contractual duties. Equity, and subsequently the common law, early recognized that the condition was the essence of a penal bond and indicated the true limit of the obligation. *Parks* v. *Wilson*, 10 Mod. 515. See *Collins* v. *Collins*, 2 Burr. 820, 824; 2 SEDGWICK, DAMAGES, 9 ed., § 675 *b*; 2 BL. COM. 341. Consequently, it came to be held that in a suit at law on a penal bond the obligee could not obtain the sum named therein, which was a penalty, and recovery was limited to the loss actually ensuing from the non-performance of the condition. *Kelley* v. *Seay*, 3 Okla. 527, 41 Pac. 615; *McIntosh* v. *Johnson*, 8 Utah 359, 31 Pac. 450. Thus, though the obligation in the supposed case is